(1) (7)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

**Division Bench**

(PIL) W.P. NO. 5106 /2005

PETITIONERS

1. Saurabh Pandey, S/o Shri M.P. Pandey, Aged about 21 years, R/o – Shankar Nagar, LIG – 62, Raipur, District – Raipur, Chhattisgarh.

2. Gaurav Jain, S/o Shri Gulab Jain, Aged about 21 years, R/o – Behind ICCI Bank Choubey Colony, Raipur, District – Raipur, Chhattisgarh.

3. Jai Kisun Bajaj, S/o Shri J.R. Bajaj, Aged about 21 years, R/o – Civil Lines, Raipur, District – Raipur, Chhattisgarh.

4. Abhishek Losalka, S/o Shri S.K. Losalka, Aged about 22 years, R/o – Jawahar Nagar Dhillon Complex, Raipur, District – Raipur, Chhattisgarh.

F.R. No. 5431/05 Ajay Sharma
Presented by
dated 19/10/05

19/10/05

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**VERSUS**

**RESPONDENTS**

1 State of Chhattisgarh, Through: Its Secretary Higher Education, D.K.S. Bhawan, Raipur, Chhattisgarh.

2. Pt. Ravi Shankar University, Through: Its Registrar, Pt. Ravi Shankar University, Amanaka Raipur, Chhattisgarh.

3. Rai Foundation,

(2)

(8)

Attested

Advocate 19/11/05

Through: Its President, Raipur Education Trust, (Rai Foundation) Mana Camp, Raipur, Chhattisgarh.

4. All India Institute of Engineering. A body corporate & constituted under All India Council For Technical Education Act, 1987. Having its - Registererd Office at I.G. Sports Complex, I.P. Estate, New Delhi – 110002.

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS, ORDERS, DIRECTIONS OR LIKE ETC.

Attested

Amendment incorporated as per court order dated 9-11-05

A/Registrar 14-11-05

4. All India Council For Technical Education (A.I.E.T. E) through its chairman , A body corporate constituted under All India Council for Technical Education Act,1987. Having its registered office at I.G. Sports Complex I.P. Estate- New Delhi.

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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**WRIT PETITION NO. 5108 OF 2005**

Saurabh Pandey and others

Vs.

State of Chhattisgarh and others

**CORAM : HON'BLE SHRI S.R. NAYAK, C.J.**
**AND HON'BLE SHRI FAKHRUDDIN, J**

Dr. N.K. Shukla, Sr. Advocate with Shri Gautam Bhaduri, counsel for the petitioners

Shri Pramod Verma, Addl. Advocate General with Shri Sumesh Bajaj, Dy. Govt. Advocate for the State/respondents 1 and 2.

Shri Y.C. Sharma, counsel for respondent No.3.

**ORDER**

1. This is a most unfortunate case looking from the angle of the petitioners/students, but, the Court is totally helpless to grant any relief to the petitioners/ students. State of Chhattisgarh enacted the Chhattisgarh Nizi Kshetra Vishwavidyalaya (Sthpana Aur Viniyaman) Adhiniyam, 2002 (for short the Act). The petitioners/students were admitted into the University/ respondent No.3 herein to pursue Engineering courses. While they were pursuing the Engineering courses in the said University, the vires of the Act was assailed before the Apex Court. The Apex Court by its judgment dated 11-2-2005 handed down in Writ Petn.(C) No.19 of 2004 and connected matters in the case of ***Prof. Yashpal and another vs. State of Chhattisgarh and others*** reported in ***2005 AIR SCW 1168*** has struck down the Act as unconstitutional. While doing so the Apex Court in paragraphs 45 and 46 observed thus :

> **"45.** As a consequence of the discussion made and the findings recorded that the provisions of Sections 5 and 6 of the Act are ultra vires and the Gazette Notifications

notifying the Universities are liable to be quashed, all such Universities shall cease to exist. Shri Amarendra Sharan, learned Additional Solicitor General has submitted that the UGC had conducted an inquiry and it was found that most of the Universities were non-existent, but the report was not placed before the Court as the complete exercise had not been done. Learned counsel for the Universities have seriously disputed this fact and have submitted that the Universities are functioning. We have not gone into this question as it is purely factual. In order to protect the interests of the students who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students and also Sections 33 and 34 of the Act, which complete dissolution of the sponsoring body and liquidation of a University whereunder responsibility has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an Institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of institution. Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by the All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law.

**46.** In view of the discussions made above, Writ Petition (C) No.19 of 2004 (Prof. Yashpal & Ors. V. State of Chhattisgarh & Ors.) and Writ Petition (C) No.565 of 2003 (Gopalji Agarawal v. Union of India & Ors.) are allowed and provisions of Sections 5 and 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Vininyaman) Adhiniyam, 2002 are declared to be ultra vires and are struck down. As a consequence of such declaration, all notifications issued by the State Government in the gazette in the purported exercise of power under Section 5 of the aforesaid Act notifying the Universities (including respondent Nos. 3 to 94) are quashed and such Universities shall cease to exist. If any institutions have been established by such Universities, steps may be taken for their affiliation to already existing State Universities in accordance with the direction contained in paragraph 45 above. Parties would be at liberty to approach the High Court if any

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dispute arises in implementation of this direction. All writ petitions, civil appeals and transferred cases filed by the Private Universities are dismissed."

2. As directed by the Apex Court in paragraph 45 of its judgment, Statute No.27(A), marked as Annexure-P/1 was issued under the provisions of the Chhattisgarh Universities Act, 1973 (for short the Universities Act). We were told that constitutional validity of the statute was also assailed before this Court and the Apex Court and ultimately the challenge failed and the validity of the statute was upheld. That judgment of the Apex Court is also reported in ***2005 AIR SCW 4612*** (***Rai University vs. State of Chhattisgarh and others).*** In the meanwhile, it appears that these three petitioners-students and certain others similarly circumstanced students were permitted to pursue the course and appear for the examinations conducted by the 2nd respondent-University. When the matter stood thus, this writ petition is presented under Articles 226 & 227 of the Constitution of India praying for the following reliefs :

"**7. RELIEF SOUGHT**

The petitioners most humbly pray for grant of following relief before this Hon'ble Court :

7.1 That, the respondent No.2 Pt. Ravi Shankar University may be directed to declare the result of the 4th semester of the student of the Engineering College of the name and styled School of Engineering & Applied Science wherein the petitioners are studying so that their future may not be wasted.

7.2 That, the petitioners may be allowed to appear in the exam of 5th semester of engineering.

7.3 That, the respondents may be directed to absorb the students in any of the engineering college affiliated to the University within the territory of Chhattisgarh State or in the alternative.

7.4 The State may be directed to take over the college infrastructure of respondent No.3 situated at Mana for deliberately defying the orders of Hon'ble Supreme Court and damaging the future of the students.

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7.5 Cost of the petition be allowed.

7.6 Any other relief as the Hon'ble Court deems fit under the circumstances of the case."

3. We have heard Dr. N.K. Shukla, learned Sr. counsel with Shri Gautam Bhaduri for the petitioners, Shri Pramod Verma, learned Addl. Advocate General with Shri Sumesh Bajaj, learned Dy. Govt. Advocate who appeared for respondents No. 1 & 2 and Shri Y.C. Sharma, learned counsel for respondent No.3.

4. Dr. Shukla, learned senior counsel drawing our attention to what is observed by the Apex Court in paragraphs 45 and 46 of the judgment in the case of ***Prof. Yashpal*** (Supra), would contend that in view of the observations contained in the above paragraphs, it is fair and just that the University must be permitted to allow the petitioners/students to pursue their education in the Engineering courses and also to declare the results of the examination of the writ petitioners. According to Dr. Shukla, that is the fair thing to be done particularly in the context of the fact that the very University, on an earlier occasion, had granted temporary affiliation to the University established by the third respondent/Rai Foundation.

5. Per contra, learned Additional Advocate General, Shri Verma would point out that the reliefs sought by the petitioners cannot be granted, if not for any reason, for the simple reason that the University in which the petitioners/students have studied the courses have yet to seek permission of the AICTE whose permission is a must for establishing the Engineering college.

6. In reply, Dr. Shukla would point out that the third respondent/Rai Foundation had already made an application before the AICTE for permission, but, AICTE has not yet taken any decision on the application.

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7. Having heard learned counsel for the parties, we are fully convinced that there is no semblance of legal right in the petitioners to seek writ of mandamus. It is trite that mandamus will never go to any authority under any circumstance unless the applicant for the writ establishes a legally enforceable vested right in him. The facts are not in dispute and they are straight-forward. The college in which the petitioners/students were admitted could not be regarded as an educational institution recognized either by the AICTE or by the University. We say this because the Act under which the third respondent/University was established is condemned by the Apex Court as unconstitutional, as a result, the University which had admitted the petitioners/students to pursue the Engineering courses could not be recognized at all in the eye of law. If the University itself cannot be recognized in the eye of law, recognizing the petitioners/students and further issuing mandamus to the second respondent/Pt. Ravi Shankar University to declare the results or to permit them to pursue their education, would not arise. Looking from any angle, we do not find any merit in the writ petition. The writ petition is devoid of merit and it is accordingly dismissed, however, with no order as to costs.

**Sd/-**
**Chief Justice**

**Sd/-**
**Fakhruddin**
**Judge**

Pathak